

Department of Veterans Affairs

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least 183 days of each calendar year in which he or she receives payments at the full-dollar rate, and may not be absent from the U.S. for more than 60 consecutive days at a time unless good cause is shown. However, if a veteran or a veteran's survivor becomes eligible for full-dollar rate benefits for the first time on or after July 1 of any calendar year, the 183-day rule will not apply during that calendar year. VA will not consider a veteran or a veteran's survivor to have been absent from the U.S. if he or she left and returned to the U.S. on the same date.

(2) A veteran or a veteran's survivor receiving benefits at the full-dollar rate under this section must notify VA within 30 days of leaving the U.S., or within 30 days of losing either his or her U.S. citizenship or lawful permanent resident alien status. When a veteran or a veteran's survivor no longer meets the eligibility requirements of paragraph (b) of this section, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized under the law, effective on the date determined under § 3.505. If such veteran or survivor regains his or her U.S. citizenship or lawful permanent resident alien status, VA will restore full-dollar rate benefits, effective the date the veteran or survivor meets the eligibility requirements in paragraph (b) of this section.

(3) When requested to do so by VA, a veteran or survivor receiving benefits at the full-dollar rate under this section must verify that he or she continues to meet the residency and citizenship or permanent resident alien status requirements of paragraph (b) of this section. VA will advise the veteran or survivor at the time of the request that the verification must be furnished within 60 days and that failure to do so will result in the reduction of benefits. If the veteran or survivor fails to furnish the evidence within 60 days, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized, as provided in § 3.652.

(4) A veteran or survivor receiving benefits at the full-dollar rate under this section must promptly notify VA of any change in his or her address. If mail from VA to the veteran or survivor is returned to VA by the U.S.

Postal Service, VA will make reasonable efforts to determine the correct mailing address. If VA is unable to determine the correct mailing address through reasonable efforts, VA will reduce benefit payments to the rate of \$0.50 for each dollar authorized under law, effective on the date determined under § 3.505.

(e) *Effective date for restored eligibility.* In the case of a veteran or survivor receiving benefits at the full-dollar rate, if VA reduces his or her payment to the rate of \$0.50 for each dollar authorized under the law, VA will resume payments at the full-dollar rate, if otherwise in order, effective the first day of the month following the date on which he or she again meets the requirements. However, such increased payments will be retroactive no more than one year prior to the date on which VA receives evidence that he or she again meets the requirements.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0655)

[66 FR 66767, Dec. 27, 2001, as amended at 71 FR 8220, Feb. 16, 2006; 72 FR 9, Jan. 3, 2007]

§ 3.43 Burial benefits at the full-dollar rate for certain Filipino veterans residing in the United States on the date of death.

(a) *Definitions.* For purposes of this section:

(1) *United States* (U.S.) means the states, territories and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) *Residing in the U.S.* means an individual's principal, actual dwelling place was in the U.S. When death occurs outside the U.S., VA will consider the deceased individual to have been residing in the U.S. on the date of death if the individual maintained his or her principal actual dwelling place in the U.S. until his or her most recent departure from the U.S., and he or she had been physically absent from the U.S. less than 61 consecutive days when he or she died.

(3) *Citizen of the U.S.* means any individual who acquires U.S. citizenship through birth in the territorial U.S., birth abroad as provided under title 8,

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United States Code, or through naturalization, and has not renounced his or her U.S. citizenship, or had such citizenship cancelled, revoked, or otherwise terminated.

(4) *Lawfully admitted for permanent residence* means that the individual was lawfully accorded the privilege of residing permanently in the U.S. as an immigrant by the U.S. Citizenship and Immigration Services under title 8, United States Code, and on the date of death, still had this status.

(b) *Eligibility requirements.* VA will pay burial benefits under chapter 23 of title 38, United States Code, at the full-dollar rate, based on service described in § 3.40(c) or (d), when an individual who performed such service dies after November 1, 2000, or based on service described in § 3.40(b) when an individual who performed such service dies after December 15, 2003, and was on the date of death:

- (1) Residing in the U.S.; and
- (2) Either—
 - (i) A citizen of the U.S., or
 - (ii) An alien lawfully admitted for permanent residence in the U.S.; and
- (3) Either—
 - (i) Receiving compensation under chapter 11 of title 38, United States Code; or
 - (ii) Would have satisfied the disability, income and net worth requirements of § 3.3(a)(3) of this part and would have been eligible for pension if the veteran's service had been deemed to be active military, naval, or air service.

(c) *Evidence of eligibility.* (1) In a claim for full-dollar rate burial payments based on the deceased veteran having been a natural born citizen of the U.S., a valid original or copy of one of the following documents is required:

- (i) A valid U.S. passport;
- (ii) A birth certificate showing that he or she was born in the U.S.; or
- (iii) A Report of Birth Abroad of a Citizen of the U.S. issued by a U.S. consulate abroad.

(2) In a claim based on the deceased veteran having been a naturalized citizen of the U.S., only verification of that status by the U.S. Citizenship and Immigration Services to VA, or a valid U.S. passport, will be sufficient proof

for purposes of eligibility for full-dollar rate benefits.

(3) In a claim based on the deceased veteran having been an alien lawfully admitted for permanent residence in the U.S., only verification of that status by the U.S. Citizenship and Immigration Services to VA will be sufficient proof for purposes of eligibility for full-dollar rate benefits.

(4) VA will not pay benefits at the full-dollar rate under this section unless the evidence establishes that the veteran was lawfully residing in the U.S. on the date of death.

(i) Such evidence should identify the veteran's name and relevant dates, and may include:

(A) A valid driver's license issued by the state of residence;

(B) Employment records, which may consist of pay stubs, W-2 forms, and certification of the filing of Federal, State, or local income tax returns;

(C) Residential leases, rent receipts, utility bills and receipts, or other relevant documents showing dates of utility service at a leased residence;

(D) Hospital or medical records showing medical treatment or hospitalization of the veteran or survivor, and showing the name of the medical facility or treating physician;

(E) Property tax bills and receipts; and

(F) School records.

(ii) A Post Office box mailing address in the veteran's name does not constitute evidence showing that the veteran was lawfully residing in the United States on the date of death.

(Authority: 38 U.S.C. 107, 501(a))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0655)

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RELATIONSHIP

§ 3.50 Spouse and surviving spouse.

(a) *Spouse.* “Spouse” means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j).

(b) *Surviving spouse.* Except as provided in § 3.52, “surviving spouse” means a person of the opposite sex